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VIA ECF

December 8, 2017

Honorable James Orenstein
225 Cadman Plaza East, Chambers 1227 South
Brooklyn, NY 11201

Re: *B & R Supermarket, Inc., et al. v. Visa, Inc., et al.*, Case No. 1:17-cv-02738-MKB-JO

Dear Judge Orenstein:

I write on behalf of Discover Financial Services (“Discover”), pursuant to Your Honor’s Individual Practice Rules IV.A.1 and IV.B.1, to renew Discover’s request to schedule oral argument on its motion for judgment on the pleadings (“Rule 12(c) Motion”). At the time of the last Status Conference, the Rule 12(c) Motion was being briefed by the relevant parties. (*See* Dkt. 596.) The 12(c) Motion has since been fully briefed and filed, (*see* Dkt. 611), and Judge Brodie has referred Discover’s 12(c) Motion to Your Honor for a Report and Recommendation. (*See* Judge Brodie’s ECF Order dated Nov. 3, 2017.)

Oral argument on Discover’s Rule 12(c) Motion is particularly appropriate following the Court’s recent hearing on Plaintiffs’ class certification motion. (*See* Minute Entry dated Nov. 29, 2017; Dkt. 622.) As Discover argued in its Rule 12(c) Motion, Plaintiffs’ proposed class of merchants cannot be certified against Discover because it would sweep in Home Depot, Target, and many other “large” merchants on antitrust claims against Discover that conflict with those same merchants’ claims in the MDL 1720. (*See* Dkt. 611-1 at 22-24.) Discover believes that oral argument would be useful to the Court to address the complex issues surrounding class conflicts inherent in Plaintiffs’ theory of Discover’s liability in this action, and that disposition of Discover’s Rule 12(c) Motion would promote equitable and efficient resolution of both this action and MDL 1720. Discover’s Rule 12(c) Motion is ripe for review.

As stated in the October Joint Status Report, (*see* Dkt. 596), Discover is amenable to arguing its Rule 12(c) Motion on any of the previously scheduled Status Conference dates, beginning January 23, 2018, or on any date convenient to the Court. Pursuant to Your Honor’s Individual Practice Rule IV.A.1, counsel for Discover heard from counsel for Plaintiffs on December 8, 2017, and Plaintiffs took no position on Discover’s request for oral argument on its Rule 12(c) Motion.



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If the Court concludes oral argument is not necessary, Discover is nevertheless happy to answer via subsequent letter any questions the Court may have pertaining to the Rule 12(c) Motion.

Sincerely,

/s/ Elizabeth P. Papez

Elizabeth P. Papez

Cc: All Counsel (via ECF)